

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

VICTORIA COOPER, *et al.*

Plaintiffs

v.

WINKING LIZARD, INC., *et al.*

Defendants

Case No. 1:16-cv-01513-DAP

Judge Dan Aaron Polster

**JOINT MOTION TO APPROVE FAIR LABOR STANDARDS ACT NOTICE AND
CONSENT FORMS AND DISTRIBUTION PROGRAM**

The Parties jointly move this Court to approve distribution of the notice and consent forms, attached as Exhibit A, to potential collective action members under Section 216(b) of the Fair Labor Standards Act. In support of this motion, the Parties state:

1. This lawsuit arises under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, for Defendants’ alleged failure to pay Plaintiffs and other similarly-situated servers and bartenders at Defendants’ Winking Lizard Tavern restaurants all earned minimum wages.

2. On November 4, 2016, Plaintiffs filed their Motion for Step-One Notice Pursuant to the Fair Labor Standards Act (“Motion for Step-One Notice”). ECF No. 16.

3. On November 21, 2016, in lieu of Defendants responding to Plaintiffs’ Motion for Step-One Notice, the Parties filed a Joint Stipulation to Step-One Notice Pursuant to the Fair Labor Standards Act. ECF No. 19. The Court entered the stipulation by marginal order on November 22, 2016. ECF No. 20. In particular, the Parties stipulated to Step-One Notice (*i.e.* conditional certification) to the following potential collective action members:

All servers and bartenders who worked at any of Defendants' Winking Lizard Tavern restaurants at any point in the three years before the Parties' stipulation was entered on the docket ("Potential Collective Action Members").

By stipulating to conditional certification of Plaintiffs' claims and/or consenting to this motion, Defendants do not concede, acknowledge or otherwise admit that Plaintiffs' claims are viable or actionable as a matter of law.

4. To facilitate sending notice to Potential Collective Action Members, Defendants will provide to a third-party administrator, to be agreed upon by the Parties, within 14 days of the date of the Court's order granting this motion, a list in Microsoft Excel format containing the following information for all servers and bartenders who worked at any of Defendants' Winking Lizard Tavern restaurants at any point in the three years before the date of the Court's order granting this motion: (i) name; (ii) last known address; and (iii) last known email address. Within seven (7) days of providing this information to the third-party administrator, Defendants' counsel will file with the Court an affidavit of compliance. Defendants agree to pay for the fees and expenses of the third party administrator

5. The Parties request that this Court authorize the third-party administrator to issue notice to Potential Collective Action Members via U.S. mail and electronic mail.

6. The Parties further request that this Court authorize that the third-party administrator issue a reminder notice to Potential Collective Action Members via U.S. mail and electronic mail within 30 days of the deadline for Potential Collective Action Members to return their consent forms to join the lawsuit.

7. Plaintiffs note for the Court that the notice and consent forms that the Parties request the Court to approve are substantially similar to those approved by other courts in similar

cases.¹

WHEREFORE, for the foregoing reasons, the Parties request that the Court grant this motion and approve the notice and consent forms, attached as Exhibit A, to be sent to Potential Collective Action Members through the methods described in this motion.

Respectfully submitted,

/s Douglas M. Werman

Douglas M. Werman (admitted *pro hac vice*)
WERMAN SALAS, P.C.
77 West Washington, Suite 1402
Chicago, IL 60602
Telephone: (312) 419-1008
Fax: (312) 419-1025
Email: dwerman@flsalaw.com

Clifford P. Bendau, II (OH No. 089601)
Christopher J. Bendau (admitted *pro hac vice*)
THE BENDAU LAW FIRM PLLC
P.O. Box 97066
Phoenix, AZ 85060
Telephone AZ: (480) 392-5176
Telephone OH: (216) 395-4226
Email: cliffordbendau@bendaulaw.com
chris@bendaulaw.com

James L. Simon (OH No. 89483)
6000 Freedom Square Drive
Independence, OH 44131
Telephone: (216) 525-8890
Fax: (216) 642-5814
Email: Jameslsimonlaw@yahoo.com

Attorneys for Plaintiffs

/s Daniel Messeloff (w/consent)

Daniel L. Messeloff (0078900)
James M. Stone (0034691)
Michael J. Kozimor (0092376)
JACKSON LEWIS P.C.
Park Center Plaza I, Suite 400
6100 Oak Tree Boulevard
Cleveland, OH 44131
Telephone: (216) 750-0404
Fax: (216) 750-0826
Email: Daniel.Messeloff@jacksonlewis.com
James.Stone@jacksonlewis.com
Michael.Kozimor@jacksonlewis.com

Attorneys for Defendants

¹ See, e.g., *Klayko v. Wingit, LLC*, Case No. 1:16-cv-00268, at ECF No. 16, at ¶ 5 (N.D. Ohio Apr. 27, 2016); *Soto v. Wings 'R Us, Romeoville, Inc.*, ECF No. 89; *Knox v. Jones Grp.*, No. 1:15-CV-01738-SEB-TAB, 2016 WL 4943825, at *10 (S.D. Ind. Sept. 16, 2016).

PROOF OF SERVICE

A copy of this document was served by the Court's ECF System on counsel of record on December 6, 2016, pursuant to Fed. R. Civ. P. 5(b)(2)(E).

Signed by,

s/Douglas M. Werman

4852-8731-3725, v. 1